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SAWYER LAW GROUP LLP			ARAQUE JR, GERARDO	
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			3629	

DATE MAILED: 07/27/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/020,752	<b>Applicant(s)</b> CROMER ET AL.	
	<b>Examiner</b> Gerardo Araque Jr.	<b>Art Unit</b> 3629	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. **Claims 1 – 18** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant fails to fully describe the mathematical process as to how a default system is determined.

The specification only discloses that a mathematical process of, "...multiplying the segment variable, inventory variable, and, where applicable, performance variable for each decision required in providing the default offering," but fails to actually show and give an example of how this process is carried out. Moreover, the applicant discloses that a default offering would be offered, but then discloses, "...If multiple default offerings are to be provided, then lower scores may be made part of the other default offerings. Thus, the default offerings can be built component by component in step 166." If the customer would have to end up choosing their components piece by piece what would the point be in providing a default offer when there can be more than one offer.

Furthermore, the applicant discloses that all that must be done to have a default offer is to multiply two variables (or 3 if applicable) and using the highest score as a means to provide a default offer. However, the applicant fails to disclose how to distinguish multiple high scores from one another. Specifically, how would the system deal with the following scenario?

- a. segment variable = 0.1; inventory variable = 1.0; and performance variable = 1.0
- b. segment variable = 1.0; inventory variable = 1.0; and performance variable = 0.1

in which the scores would be the following:

- a. 1.0
- b. 1.0

As it can be seen both scores are equal to each other yet both would produce two completely different systems. Further still, the applicant does not disclose how business segments would be treated for different business, i.e. game development vs. school administration. The current system does not show any indication of how this would be dealt. A game development business would want to focus more on high-end video cards, memory, and etc. while the school administration would want to focus more on a simple business that has high security, but in no need of the high-end hardware needed by the game developers. The current system would put a burden upon the customer in that they would need to research all the components on their own since the "rating" provided by the applicant is not useful.

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3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. **Claims 1 – 18** are rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: In regard to **claims 1 and 10**, the applicant has failed to include the essential steps of:

- a. Providing the plurality of business segments to the customer; and
- b. Providing the plurality of performance variables to the customer.

Furthermore, the applicant only "allows" a user to select at least one business segment and at least one performance level, but no selection has been made. As a result, how would a default offering based on at least one business segment and at least on performance level be made if no selection has been made.

5. **Claim 1** recites the limitation "the plurality of business segments" in **line 4 of claim 1**. There is insufficient antecedent basis for this limitation in the claim.

6. **Claim 1** recites the limitation "the plurality of components" in **line 7 of claim 1**. There is insufficient antecedent basis for this limitation in the claim.

7. **Claims 3 and 4** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to **claim 1**, the step for dynamically determining the default offering is based on at least one performance variable and at least one business segment variable; yet in **claims 3 and 4**, the default offering is

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determined based on at least one segment variable and at least one performance variable. **Claims 3 and 4** contradict the dynamically determining process of **claim 1**.

8. **Claims 5** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is claiming to only provide "...a portion of the plurality of business segments to the customer." However, the applicant does not disclose how much a portion is. Moreover, if only a portion is being provided then how would a default offering be provided when all the options are not being provided to the customer? Furthermore, providing the plurality of business segments to the customer is an essential step that must be included in **claim 1** in order to provide the default offering.

9. **Claim 6** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Providing the plurality of business segments to the customer is an essential step that must be included in **claim 1** in order to provide the default offering.

10. **Claim 7** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is claiming to only validate "...a portion of the plurality of components against an inventory to determine whether the portion of the plurality of components is available." However, the applicant does not disclose how much a portion is. Moreover, if only a portion is being provided then how would a

default offering be provided when all the options are not being provided to the customer? Furthermore, if only a portion of the plurality of components is being validated what happens to the rest of the components? Would that not affect the quality of the service that is being provided for the customer?

11. **Claim 8** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is claiming whether only a portion of the plurality of components is available. However, the applicant does not disclose how much a portion is. Moreover, if only a portion is being provided then how would a default offering be provided when all the options are not being provided to the customer?

12. **Claims 12 and 13** are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In regards to **claim 10**, the step for dynamically determining the default offering is based on at least one performance variable and at least one business segment variable; yet in **claims 12 and 13**, the default offering is determined based on at least one segment variable and at least one performance variable. **Claims 12 and 13** contradict the dynamically determining process of **claim 10**.

13. **Claims 14** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is claiming to only provide "...a

portion of the plurality of business segments to the customer.” However, the applicant does not disclose how much a portion is. Moreover, if only a portion is being provided then how would a default offering be provided when all the options are not being provided to the customer? Furthermore, providing the plurality of business segments to the customer is an essential step that must be included in **claim 10** in order to provide the default offering.

14. **Claim 15** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Providing the plurality of business segments to the customer is an essential step that must be included in **claim 10** in order to provide the default offering.

15. **Claim 16** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is claiming to only validate “...a portion of the plurality of components against an inventory to determine whether the portion of the plurality of components is available.” However, the applicant does not disclose how much a portion is. Moreover, if only a portion is being provided then how would a default offering be provided when all the options are not being provided to the customer? Furthermore, if only a portion of the plurality of components is being validated what happens to the rest of the components? Would that not affect the quality of the service that is being provided for the customer?



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16. **Claim 17** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The applicant is claiming whether only a portion of the plurality of components is available. However, the applicant does not disclose how much a portion is. Moreover, if only a portion is being provided then how would a default offering be provided when all the options are not being provided to the customer?

***Claim Rejections - 35 USC § 101***

17. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

18. **Claims 1 – 18** are rejected under 35 U.S.C. 101 because the number assigned to the segment variables are subjective and, therefore, fails to produce a “**concrete**” result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again. In re Swartz, 232 F.3d 862, 864 (Fed. Cir. 2000) (where asserted result produced by the claimed invention is “irreproducible” claim should be rejected under section 101). The opposite of “concrete” is unrepeatable or **unpredictable**. Resolving this question is dependent on the level of skill in the art. For example, if the claimed invention is for a process which requires a particular skill, to determine whether that process is substantially repeatable will necessarily require a determination of the level of skill of the ordinary artisan in that field. An appropriate rejection under 35 U.S.C. § 101 should be accompanied by a lack of enablement

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rejection under 35 U.S.C. § 112, paragraph 1, because the invention cannot operate as intended without undue experimentation. *See infra*.

The examiner understands the specifications as a person choosing these numbers and, as a result, will produce different results. Several people would have different views as to what is important and essential to a system and would assign different values based on their views. In order to have a system as disclosed by the applicant a programmer would have to input the values of each of the components. However, the views of what these values should be are subjective based on the individual(s) past experience and current knowledge base.

Furthermore, a customer who has extensive experience in computer systems would not always agree with what the vendor has displayed as a value to each of these components. In the event that a computer must be built for a business that requires extensive graphics there would be different views on what components would be best for the type of business. For example, a company that uses engineering software such as AutoCAD/SolidWorks would require a video card and processor tailored for 3D engineering, a game developer would require a different video card and processor for the rendering of video games, and a company specializing in movie development would require a different video card and processor for the rendering of movies. How would the system be able to inform the consumer that Radeon would be a superior video card over a GeForce and, further still, what brand of each video card would be best for a given situation? As it can be seen, the applicant fails to disclose how the system would handle these situations and, as a result, would not produce a consistent default offer if

the only options that are given for a business segment variable are commercial, small business, or individual consumers.

***Claim Rejections - 35 USC § 103***

19. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. **Claims 1 – 9, 10 – 18, and 19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Henson (US Patent 6,167,383) in view of Lynch-Freshner et al. (US Patent 5,668,997).

In regards to **claim 1**, Henson discloses a method for a configuration system that allows a user to select the type of business that the computer will be used for, i.e. home/personal use (Column 11 Lines 63 – 67) or a business user (Column 13 Lines 6 – 17, 29 – 33). Moreover, Henson discloses that the user has the option of selecting several types of configuration options, such as the desired performance level of the desired system (Figures 3, 4, and 5) and is presented with merchandising recommendations, such as generic text about a particular product, feature, and/or option (Column 7 Lines 22 – 29). Furthermore, before the user is presented with the configuration menu the online store that Dell offers provides the user with information of the system and the several default configurations of the chosen system based on the business segment provided by the consumer

([http://web.archive.org/web/20000511045940/www.dell.com/us/en/dhs/products/line\\_de](http://web.archive.org/web/20000511045940/www.dell.com/us/en/dhs/products/line_de)

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sktops.htm[http://web.archive.org/web/20000511074752/www.dell.com/us/en/dhs/products/series\\_dimen\\_desktops.htm](http://web.archive.org/web/20000511074752/www.dell.com/us/en/dhs/products/series_dimen_desktops.htm)[http://web.archive.org/web/20000618194040/www.dell.com/us/en/dhs/offers/offer\\_3x\\_of\\_fer02.htm](http://web.archive.org/web/20000618194040/www.dell.com/us/en/dhs/offers/offer_3x_of_fer02.htm)). However, Henson does not teach a dynamic system in which the

information regarding the business segment and performance level is used to present the user with a default system. However, Lynch-Freshner does teach a server that accepts parameters from a client and produces a window in accordance with the parameters with the use of a program, such as C++ (Column 4 Lines 60 – 66, Column 8 Lines 1 – 8). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teaching of Lynch-Freshner to modify Henson to include a dynamic system of receiving parameters, such as a business segment and performance level, from a user and producing a window in accordance with the parameters, such as a default system based on the selected business segment and performance level.

In regards to **claims 2 and 11**, Henson discloses, "In accordance with the online store of the present disclosure, upon a recognition of who a particular customer is (e.g., or in what customer set), the online store takes out the unrelated options and departments, and does not present them to the customer as options for the customer (Column 13 Lines 29 – 34)."

In regards to **claims 3 – 4 and 12 – 13**, in order for the system described in Lynch-Freshner, some type of computational calculation must be made in order to

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present a user with a window that will be in accordance with the parameters that are received from the client. Moreover, Lynch-Freshner discloses a concept of polymorphism with the use of a C++ compiler, "...which allows objects and functions which have the same overall format, but which different data, to function differently in order to produce consistent results. For example, an addition function may be defined as variable A plus variable B (A+B) and this same format can be used whether A and B are numbers, characters or dollars and cents (Column 7 Lines 56 – 62)."

In regard to **claims 5 – 6 and 14 – 15**, the online store that is described in Henson provides the user with several options of the default systems based on the selected business segment and performance level from the user

([http://web.archive.org/web/20000618194040/www.dell.com/us/en/dhs/offers/offer\\_3x\\_offer02.htm](http://web.archive.org/web/20000618194040/www.dell.com/us/en/dhs/offers/offer_3x_offer02.htm)).

In regards to **claims 7 and 16**, Henson discloses that the online store improves on the quality of buying online by optimizing on the responsiveness of customer requests, such as availability and speed (Column 16 Lines 58 – 61).

In regards to **claims 8 and 17**, Henson discloses the concept of lead-time on the online store. Warnings are presented to the customer in the case that there is a long lead-time. It is well known in the art that lead-time is closely associated with the amount of stock that is available for a particular item.

(<http://www.xreferplus.com/entry.jsp?xrefid=1414013&secid=-&hh=1>

<http://www.xreferplus.com/entry.jsp?xrefid=1412740>) and that a long lead-time signifies that there is a low amount of a particular item in stock.

In regards to **claims 9 and 18**, Henson discloses that the online store will allow a customer to pick and choose which components the customer would want to improve on the base system that was provided (Column 6 Lines 18 – 21).

In regards to **claim 10**, Henson discloses configuration system that allows a user to select the type of business that the computer will be used for, i.e. home/personal use (Column 11 Lines 63 – 67) or a business user (Column 13 Lines 6 – 17, 29 – 33).

Moreover, Henson discloses that the user has the option of selecting several types of configuration options, such as the desired performance level of the desired system (Figures 3, 4, and 5) and is presented with merchandising recommendations, such as generic text about a particular product, feature, and/or option (Column 7 Lines 22 – 29). Furthermore, before the user is presented with the configuration menu the online store that Dell offers provides the user with information of the system and the several default configurations of the chosen system based on the business segment provided by the consumer

[http://web.archive.org/web/20000511045940/www.dell.com/us/en/dhs/products/line\\_desktops.htm](http://web.archive.org/web/20000511045940/www.dell.com/us/en/dhs/products/line_desktops.htm)

[http://web.archive.org/web/20000511074752/www.dell.com/us/en/dhs/products/series\\_desktops.htm](http://web.archive.org/web/20000511074752/www.dell.com/us/en/dhs/products/series_desktops.htm)

[http://web.archive.org/web/20000618194040/www.dell.com/us/en/dhs/offers/offer\\_3x\\_of\\_offer02.htm](http://web.archive.org/web/20000618194040/www.dell.com/us/en/dhs/offers/offer_3x_of_offer02.htm)). However, Henson does not teach a dynamic system in which the information regarding the business segment and performance level is used to present the user with a default system. However, Lynch-Freshner does teach a server that

accepts parameters from a client and produces a window in accordance with the parameters with the use of a program, such as C++, that is executed by a computer (Column 4 Lines 60 – 66, Column 8 Lines 1 – 8). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention in view of the teaching of Lynch-Freshner to modify Henson to include a dynamic system of receiving parameters, such as a business segment and performance level, from a user and producing a window in accordance with the parameters, such as a default system based on the selected business segment and performance level.

In regards to **claim 19**, Lynch-Freshner discloses a computer (Figure 3) programmed with C++ for the use of object-oriented programming techniques (Column 6 Lines 58 – 64). This, in turn, will allow the computer to accept parameters to create window objects in accordance with the parameters that were given (Column 4 Lines 65 – 66). Moreover, “If the particular parameters are not present the window is displayed using a default layering scheme, and the window takes on parameters associated with the already displayed windows (Column 5 Lines 9 – 12).”

### ***Response to Arguments***

21. Applicant's arguments filed June 9, 2006 have been fully considered but they are not persuasive.

22. In regards to applicant's argument found on page 8 paragraph 3 to page 9 last paragraph the examiner maintains the rejection. As previously discussed the applicant has not properly disclosed the process required to provide a default system that adequately reflects what the consumer needs. The applicant argues (page 9 last

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paragraph) that all must be done is to multiply the variables together and a default system is offered. As discussed above, this process is flawed in that the same score would be provided, but with different default offers.

23. In regards to applicant's argument found on page 10 paragraph 2 the examiner maintains the rejection. As previously discussed the values given to these variables are subjective in that they will differ based on the individual who is inputting what these values should be. Moreover, as previously discussed, the values of these variables would further be subjective based on the business's need. As was discussed individuals would disagree as to what components would be best for a given business's practice.

24. In regards to applicant's argument found on page 10 regarding the 103 rejection to page 12 the examiner maintains the rejections. The applicant argues that the only mention of a business segment is during the checkout process. However, it is inherent that the business segment must be chosen at the beginning of the process in order to fully customize the system. As it can be seen through the links (claim 1) and NPL's provided to the applicant Dell provides the consumer with a welcome screen with different business segments. Moreover, it is old and well known that the checkout process need not coincide with the initial inputs made by the consumer. That is, the consumer may buy a computer for home use but may be paid for through a company.

Furthermore, Lynch-Freshner remedies the defects of Henson by providing a system in which parameters are used to produce an output based on the inputted parameters. Lynch-Freshner discloses, as previously discussed, that the window server



creates window objects in **accordance** with the parameters. Henson teaches that only business parameters are used in order to provide an output. However, Lynch-Freshner teaches that multiple parameters can be used to provide a desired output. Both, in combination, teach the usage of a user inputting multiple parameters in order to produce some type of output that is in accordance with the inputted parameters. It would have been obvious to modify Henson with the teachings of Lynch-Freshner in that more than one parameter can be used in order to produce a more specific output, computer system. The fact that these parameters must be a business segment or performance level is irrelevant since they are both parameters that carry out the same function when Henson and Lynch-Freshner are used in combination.

25. In regards to dependant claims 2 – 9 and 11 – 18, the examiner's rejection is maintained as a result of the rejections made upon claims 1, 10, and 19.

### ***Conclusion***

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

1. Bealkowski et al. (US Patent 5,193,174) – Bealkowski discloses an apparatus and method for configuring a personal computer system for operation with a plurality of operational system consoles.
2. Anderson et al. (US Patent 5,903,905) – Anderson discloses a method for simultaneously constructing and displaying a dynamic preview display of a document.

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3. Herz et al. (Publication Number US 2001/0014868 A1) – Herz teaches a system for customizing prices and promotions tailored to shoppers or types of shoppers.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gerardo Araque Jr. whose telephone number is (571)272-3747. The examiner can normally be reached on Monday - Friday 8:30AM - 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

GA  
7-18-2006



JOHN G. WEISS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600